

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Barry Appelman et al.	Art Unit :	2142
Serial No. :	09/842,024	Examiner :	Robert B. Harrell
Filed :	April 26, 2001	Conf. No. :	6929
Title :	TARGETED NOTIFICATION OF USERS OF A COMMUNICATIONS SYSTEM		

**Mail Stop Appeal Brief - Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

BRIEF ON APPEAL

**(1) Real Party in Interest**

The real party in interest is AOL LLC.

**(2) Related Appeals and Interferences**

None.

**(3) Status of Claims**

Rejected Claims

1, 2, 4-11, and 15-20.

Canceled Claims

3 and 12-14.

Claims Appealed

1, 2, 4-11, and 15-20.

**(4) Status of Amendments**

The amendment filed on December 13, 2006, in response to the non-final Office Action was entered by the advisory action dated January 3, 2007.

**(5) Summary of Claimed Subject Matter**

1. A method for transmitting data to one or more online users of a communications system, the method comprising:

establishing a connection with one or more online users; (*See, e.g.*, Application, page 17, line 28 to page 18, line 3 and FIG. 7)

designating targeting rules applicable to the one or more online users, the targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software; (*See, e.g.*, Application, page 18, lines 4-10; page 21, lines 16-17; and FIG. 7)

acquiring context information of the one or more online users, the context information indicating at least geographic locations of the one or more online users and at least one of a client type of access device employed by the one or more online users or a client type of software employed by the one or more online users; (*See, e.g.*, Application, page 18, lines 11-17; page 21, lines 20-21; and FIG. 7)

applying the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software; (*See, e.g.*, Application, page 18, lines 18-21; page 21, lines 25-27; and FIG. 7)

generating a message that contains geographic information describing conditions in at least a portion of the target geographic location; (*See, e.g.*, Application, page 18, lines 22-29; page 22, lines 6-1; FIG. 7 and FIG. 11) and

sending the message to the identified subset of the one or more online users. (*See, e.g.*, Application, page 18, lines 22-29; page 21, lines 28-29; and FIG. 7)

15. A computer program, embodied on a computer readable storage medium, comprising instructions for:

establishing a connection with one or more online users; (*See, e.g.*, Application, page 17, line 28 to page 18, line 3 and FIG. 7)

designating targeting rules applicable to the one or more online users, the targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software; (*See, e.g.*, Application, page 18, lines 4-10; page 21, lines 16-17; and FIG. 7)

acquiring context information of the one or more online users, the context information indicating at least geographic locations of the one or more online users and at least one of a client type of access device employed by the one or more online users or a client type of software employed by the one or more online users; (*See, e.g.*, Application, page 18, lines 11-17; page 21, lines 20-21; and FIG. 7)

applying the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software; (*See, e.g.*, Application, page 18, lines 18-21; page 21, lines 25-27; and FIG. 7)

generate a message that contains geographic information describing conditions in at least a portion of the target geographic location; (*See, e.g.*, Application, page 18, lines 22-29; page 22, lines 6-1; FIG. 7 and FIG. 11) and

sending the message to the identified subset of the one or more online users. (*See, e.g.*, Application, page 18, lines 22-29; page 21, lines 28-29; and FIG. 7)

19. A communications apparatus, comprising a host configured to:

establish a connection with one or more online users; (*See, e.g.*, Application, page 17, line 28 to page 18, line 3 and FIG. 7)

designate targeting rules applicable to the one or more online users, the targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software; (*See, e.g.*, Application, page 18, lines 4-10; page 21, lines 16-17; and FIG. 7)

acquire context information of the one or more online users, the context information indicating at least geographic locations of the one or more online users and at least one of a client type of access device employed by the one or more online users or a client type of software employed by the one or more online users; (*See, e.g.*, Application, page 18, lines 11-17; page 21, lines 20-21; and FIG. 7)

apply the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one

of the target type of access device or the target type of software; (*See, e.g.*, Application, page 18, lines 18-21; page 21, lines 25-27; and FIG. 7)

generate a message that contains geographic information describing conditions in at least a portion of the target geographic location; (*See, e.g.*, Application, page 18, lines 22-29; page 22, lines 6-1; FIG. 7 and FIG. 11) and

send the message to the identified subset of the one or more online users. (*See, e.g.*, Application, page 18, lines 22-29; page 21, lines 28-29; and FIG. 7)

#### **(6) Grounds of Rejection to be Reviewed on Appeal**

The rejection of claims 1, 2, 4-11, and 15-20 as being as anticipated under 35 U.S.C. § 102(e) by U.S. Patent Number 6,360,172 (“Burfeind”).

#### **(7) Argument**

The following remarks address the improper rejections of the claims under 35 U.S.C. § 102(e). The Final Office Action has failed to establish a *prima facie* case of anticipation. MPEP § 2131 states that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Applicants respectfully submit that Burfeind fails to describe or suggest each and every element of independent claims 1, 15, and 19. In addition to failing to describe each and every element of independent claims 1, 15, and 19, Burfeind also fails to describe or suggest elements of dependent claims 4 and 11. The subsequent paragraphs first address the improper rejections of independent claims 1, 15, and 19, and then address the improper rejections of dependent claims 4 and 11.

##### **A. Burfeind fails to describe or suggest all the features of independent claims 1, 15, and 19 and therefore fails to anticipate these claims and the claims that depend from them.**

Claims 1, 2, 4-11, and 15-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Burfeind. Applicants respectfully request withdrawal of this rejection because Burfeind fails to describe or suggest “targeting rules designating . . . a target type of access device or a target type of software and applying the targeting rules to the context information to identify a subset of

the one or more online users . . . who employ at least one of the target type of access device or the target type of software,” as recited in claim 1 and similarly recited in claims 15 and 19.

Burfeind describes a system in which a user is first identified and then a device or software type associated with that user is determined, rather than using the device or software type to identify the user, as recited in claims 1, 15, and 19. Specifically, Burfeind describes a system that gathers natural-phenomenological data and personal preferences of the subscriber. Col. 3, lines 1-8. The personal preferences of the subscriber include the subscriber's activities and the geographic locations of the activities, calendar information of the subscriber and modes of delivery. Col. 3, lines 4-8.

The system uses the personal preferences of the subscriber, such as the subscriber's activities, to generate natural-phenomenological data that is particularly useful to the subscriber. Col. 10, lines 13-19 and lines 44-53 (stating the system “generates for a subscriber who has indicated in his/her dynamic personal preferences that sailing is an activity of the subscriber... [a message indicating] the winds for sailing tomorrow will be 10-12 knots”). Once the system generates the personalized natural-phenomenological data, the system delivers the natural-phenomenological data to the output device identified by the subscriber in the personal preferences. *Id.* (stating the system routes the personalized natural-phenomenological information to the subscriber based on the subscriber's output device).

In the final Office Action and during the interview, the Examiner asserted that, in Burfeind, the personal preferences of each subscriber stored in the personal preference database 426 of FIG. 4 comprises the targeting rules, and as such, the targeting rules include target geographic location of the user and a target type of access device or a target type of software modes of delivery. Final Office Action at page 3, lines 16-17. Even assuming, *arguendo*, that this assertion is correct, Burfeind still fails to describe or suggest applying the targeting rules to the context information *to identify a subset of one or more online users*, as recited in claim 1 and similarly recited in claims 15 and 19.

Instead, as clearly shown and described with respect to FIG. 4 of Burfeind, Burfeind's system first identifies a user, accesses personal preferences for the identified user, and subsequently generates a message based on the personal preferences of the identified user. Only then will the system retrieve an identification of the output device of the subscriber from the

personal preferences to route the message to that device. Col. 10, lines 12-19 and col. 10, line 44 to col. 11, line 22 (stating after the personalized message is generated “the multimedia device interface 480 retrieves the identification of the output device(s) 481 of the subscriber from the personal preferences database”). As such, the system in Burfeind does not use targeting rules designating a target type of access device or a target type of software *to identify* a subset of one or more online users and, instead, uses an identified subscriber to determine the access device or software to which the personalized message should be routed.

Accordingly, Burfeind fails to describe or suggest “targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software and applying the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software,” as recited in claim 1 and similarly recited in claims 15 and 19.

For at least these reasons, Applicants respectfully request reversal of the rejections of claims 1, 15, and 19, along with their dependent claims.

**B. Burfeind fails to describe or suggest all the features of dependent claims 4 and 11.**

Applicants respectfully submit that the dependent claims 4 and 11 are allowable on their own merits. Claim 4 recites, among other features, “the targeting rules additionally designate an online location and applying the targeting rules to the context information comprises applying the targeting rules to the context information to identify the subset of the one or more online users that are located in the target geographic location, who employ at least one of the target type of access device or the target type of software, and who are visiting the online location.” Claim 11 recites, among other features, “ranking the one or more online users based on the specified parameters.” Neither of these features is described or otherwise suggested by Burfeind.

The Examiner seems to rely on FIGS. 10-12 and column 8, line 17 – et seq. for rejecting claim 4. Non Final Office Action at page 4, lines 24-31. Applicants respectfully submit that these portions of Burfeind do not pertain to the subject matter of claim 4. For example, in FIG. 10, Burfeind describes class diagrams of the personal preferences class and classes related to the personal preferences class. For instance, FIG. 10 illustrates a sensitivity class (1020), a

geographic location class (1030), a season class (1040), and a base class (1050). Col. 13, lines 52-64. Although, here Burfeind describes attributes associated with a geographic-location, this s does not describe or suggest an online location. As such, in this portion, Burfeind does not describe or suggest designating an online location as a rule for targeting one or more online users.

Column 8, line 17 – et seq. of Burfeind is equally deficient. In column 8, Burfeind generally describes personalizing natural phenomenological data based on the personal preferences of the subscriber. For example, for a subscriber engaged in a sailing activity, Burfeind's system generates information regarding wind speed and direction. Col. 8, lines 17-43. As such, this portion also does not describe or suggest designating an online location as a rule for targeting one or more online users.

Accordingly, Burfeind fails to describe or suggest “the targeting rules additionally designate an online location and applying the targeting rules to the context information comprises applying the targeting rules to the context information to identify the subset of the one or more online users that are located in the target geographic location, who employ at least one of the target type of access device or the target type of software, and who are visiting the online location.”

For at least these reasons, Applicants respectfully request reversal of the rejections of claim 4.

In connection with claim 11, the Examiner appears to rely on column 10, line 44 – et seq. and asserts that the subscriber's output devices (e.g., voicemail and e-mail) are device specific and software dependent and therefore belong to different ranks. Non Final Office Action at page 4, lines 26-29. Even assuming for the sake of the argument that this assertion is correct, this still fails to describe or suggest “ranking the one or more online users based on the specified parameters.” This at most describes ranking devices or software, and not users.

Accordingly, Burfeind fails to describe or suggest “ranking the one or more online users based on the specified parameters.” For at least these reasons, Applicants respectfully request reversal of the rejections of claim 11.

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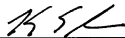
The brief fee of \$500 is authorized to be charged to Deposit Account No. 06-1050.

Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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3/16/07



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### **Appendix of Claims**

1. (Previously presented) A method for transmitting data to one or more online users of a communications system, the method comprising:

establishing a connection with one or more online users;

designating targeting rules applicable to the one or more online users, the targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software;

acquiring context information of the one or more online users, the context information indicating at least geographic locations of the one or more online users and at least one of a client type of access device employed by the one or more online users or a client type of software employed by the one or more online users;

applying the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software;

generating a message that contains geographic information describing conditions in at least a portion of the target geographic location; and

sending the message to the identified subset of the one or more online users.

2. (Previously Presented) The method of claim 1 wherein the message comprises a notification message.

3. (Cancelled)

4. (Previously presented) The method of claim 1 wherein the targeting rules additionally designate an online location and applying the targeting rules to the context information comprises applying the targeting rules to the context information to identify the subset of the one or more online users that are located in the target geographic location, who employ at least one of the target type of access device or the target type of software, and who are visiting the online location.

5. (Previously presented) The method of claim 1 wherein the targeting rules designate the target type of access device employed by the one or more online users and applying the targeting rules to the context information comprises applying the targeting rules to the context information to identify the subset of the one or more online users that are located in the target geographic location and who employ the target type of access device.

6. (Previously presented) The method of claim 1 wherein the targeting rules designate a target type of software employed by the one or more online users and applying the targeting rules to the context information comprises applying the targeting rules to the context information to identify the subset of the one or more online users that are located in the target geographic location and who employ the target type of software.

7. (Previously presented) The method of claim 1 wherein the context information of the one or more online users includes a token identifying a geographic location of an online user.

8. (Previously presented) The method of claim 1 wherein the geographic information describing the conditions in at least the portion of the target geographic location comprises a weather forecast for the target geographic location.

9. (Previously presented) The method of claim 1 wherein the geographic information describing the conditions in at least the portion of the target geographic location comprises current weather conditions for the target geographic location.

10. (Previously presented) The method of claim 1 wherein the targeting rules include specified parameters and applying the targeting rules to the context information includes identifying the one or more online users meeting the specified parameters.

11. (Previously presented) The method of claim 10 further comprising ranking the one or more online users based on the specified parameters.

12 - 14. (Cancelled).

15. (Previously presented) A computer program, embodied on a computer readable storage medium, comprising instructions for:

establishing a connection with one or more online users;

designating targeting rules applicable to the one or more online users, the targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software;

acquiring context information of the one or more online users, the context information indicating at least geographic locations of the one or more online users and at least one of a client type of access device employed by the one or more online users or a client type of software employed by the one or more online users;

applying the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software;

generate a message that contains geographic information describing conditions in at least a portion of the target geographic location; and

sending the message to the identified subset of the one or more online users.

16. (Previously presented) The computer program of claim 15 wherein the geographic information describing the conditions in at least the portion of the target geographic location comprises a weather forecast for the target geographic location.

17. (Previously presented) The computer program of claim 15 wherein the geographic information describing the conditions in at least the portion of the target geographic location comprises current weather conditions for the target geographic location.

18. (Previously presented) The computer program of claim 15 wherein the computer readable storage medium comprises a host device.

19. (Previously presented) A communications apparatus, comprising a host configured to:

- establish a connection with one or more online users;

- designate targeting rules applicable to the one or more online users, the targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software;

- acquire context information of the one or more online users, the context information indicating at least geographic locations of the one or more online users and at least one of a client type of access device employed by the one or more online users or a client type of software employed by the one or more online users;

- apply the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software;

- generate a message that contains geographic information describing conditions in at least a portion of the target geographic location; and

- send the message to the identified subset of the one or more online users.

20. (Original) The apparatus of claim 19 wherein the host comprises a targeting server interconnected with an instant voting server and a routing processor.

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### **Evidence Appendix**

**None.**

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### **Related Proceedings Appendix**

None.